

PART V.

~~SPOUSAL IMPOVERISHMENT.~~

MARRIED INSTITUTIONALIZED INDIVIDUALS' ELIGIBILITY AND PATIENT PAY.

SUBPART I.

DEFINITIONS.

12VAC30-110-720. Definitions.

The following words and terms when used in this part, shall have the following meanings unless the context clearly indicates otherwise:

"Acceptable medical evidence" means either (i) certification by a nursing home preadmission screening committee; or (ii) certification by the individual's attending physician.

"Actual monthly expenses" means the total of:

1. Rent or mortgage, including interest and principal;
2. Taxes and insurance;
3. Any maintenance charge for a condominium or cooperative; and
4. The utility standard deduction under the Food Stamp Program that would be appropriate to the number of persons living in the community spouse's household, if utilities are not included in the rent or maintenance charge.

"Applicable percent" means that percentage as defined in §1924 (d)(3)(B) of the Social Security Act.

"As soon as practicable" (as it relates to transfer of resources from the institutionalized spouse to the community spouse for the purpose of the community spouse resource allowance) means within 90 days from the date the local agency takes action to approve the institutionalized spouse's initial eligibility for medical assistance long-term care services when ~~an institutional~~ the institutionalized spouse agrees to transfer resources to the community spouse , ~~unless the department determines that a longer period is necessary~~ .

"At the beginning of the first continuous period of institutionalization" means the first calendar month of a continuous period of institutionalization in a medical institution or of receipt of a Medicaid community-based care waiver services or of hospice.

"Community spouse" means a person who is married to an institutionalized spouse and is not himself an inpatient at a medical institution or nursing facility ~~and who is married to an institutionalized spouse~~.

~~"Community spouse maintenance needs allowance" is an amount by which the applicable Percentage of 1/12 of the Federal Poverty Level for a family of two, in effect on July 1 of each Year, plus an excess shelter allowance exceeds the amount of monthly income otherwise available to the community spouse. The community spouse maintenance allowance cannot exceed \$1,500 adjusted annually in accordance with §1924(g) except pursuant to a court order or an amount designated by a DMAS hearing officer.~~

"Community spouse monthly income allowance" means an amount by which the minimum monthly maintenance needs allowance exceeds the amount of monthly income otherwise available to the community spouse.

"Community spouse resource allowance" means the amount of the resources in the institutionalized spouse's name which can be transferred to the community spouse to bring the resources in the community spouse's name up to the protected resource amount ~~the difference between a couple's countable resources and the greatest of (i) the spousal share, not to exceed \$60,000; or (ii) the spousal resource standard, \$12,000; or (iii) an amount transferred to the community spouse by the institutionalized spouse pursuant to a court support order; or (iv) an amount designated by a department hearing officer; For services furnished during a calendar year after 1989, the dollar amounts specified in this section shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved.~~

"Continuous period of institutionalization" means 30 consecutive days of institutional care in a medical institution or nursing facility, or 30 consecutive days of receipt of Medicaid waiver or hospice services, or 30 consecutive days of a combination of institutional , ~~and~~ waiver and hospice services. Continuity is broken only by 30 or more days absence from ~~institutionalization~~ a medical institution or 30 or more days of non-receipt of waiver services.

"Couple's countable ~~Countable~~ resources" means all of the couple's nonexempt non-excluded resources, ~~except for a couple's home, contiguous property, household goods, and one automobile. These items are exempt for~~

~~purposes of determining the combined and separate resources of institutionalized and community spouses only,~~  
regardless of state laws relating to community property or division of marital property. For purposes of  
determining the combined and separate resources of the institutionalized and community spouses when  
determining the institutionalized spouse's eligibility, the couple's home, contiguous property, household goods  
and one automobile are excluded.

"Department" means the Department of Medical Assistance Services.

"Dependent child" means a child under age 21 and a child age 21 years old or older, of either spouse, who lives with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

"Dependent family member" means a parent, minor child, dependent child, or dependent sibling, including half brothers and half sisters and siblings gained through adoption, of either member of a couple who resides with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

"Exceptional circumstances resulting in significant financial duress" means circumstances other than those taken into account in establishing the spousal maintenance allowance for which the community spouse incurs expenses in amounts that he cannot be expected to pay from the spousal maintenance allowance or from amounts held in the community spouse resource allowance.

"Excess shelter allowance" means the amount by which the actual monthly expense of maintaining the community spouse's residence plus the standard utility allowance ~~that exceeds 30% of the community spouse maintenance needs allowance, but limited to the total of (i) rent or mortgage, including interest and principal; (ii) taxes and insurance; (iii) any maintenance charge for a condominium or cooperative; and (iv) utilities, if not included in the rent or maintenance charge, except that utility expenses will not be included to the extent that they exceed the standard deduction under the Food Stamp program that would be appropriate to the number of persons living in the community spouse's household~~ the excess shelter standard.

"Excess shelter standard" means 30% of the monthly maintenance needs standard.

"Family member's income allowance" means an allowance for each dependent family member residing with the community spouse. The family member's income allowance is equal to 1/3 of the amount by which the monthly maintenance needs standard exceeds the family member's income.

"Federal Poverty Level" or "FPL" means the annual Federal Poverty Level as computed by the Office of Management and Budget and published in the Federal Register.

"First continuous period of institutionalization" means the first day of the first month of the first continuous period of institutionalization, which began on or after September 30, 1989.

"Initial eligibility determination" means:

1. ~~An Eligibility eligibility determinations~~ determination made in conjunction with a ~~Medicaid~~ medical assistance applications application filed during an individual's most recent continuous period of institutionalization; or

2. The ~~first~~ initial redetermination of eligibility for a ~~Medicaid~~ medical assistance eligible institutionalized spouse after being admitted to an institution or receiving medical assistance community-based care waiver services.

"~~Initial redeterminations~~ re-determination" means ~~those~~ the first ~~redeterminations~~ re-determination of eligibility for a ~~Medicaid~~ medical assistance eligible spouse which ~~are~~ is regularly scheduled, or which ~~are~~ is made necessary by a change in the individual's circumstances.

"Institutionalized spouse" means ~~a married person~~ an individual who is an inpatient at a medical institution ~~or nursing facility~~, or who is receiving medical assistance community-based waiver services, or who has elected hospice services; and who is likely to remain in such facility or ~~under such care~~ to receive waiver or hospice services for at least 30 consecutive days, and ~~whose~~ who has a spouse who is not ~~an inpatient at~~ in a medical institution or nursing facility.

"Likely to remain in an institution" means a reasonable expectation based on acceptable medical evidence that an individual will be in a medical institution or will receive medical assistance waiver or hospice services for 30 consecutive days, even if receipt of institutional care or waiver or hospice services actually terminates in less

than 30 days. Individuals who have been screened and approved for medical assistance community-based waiver services or who have elected hospice services shall be considered likely to remain in an institution.

“Maximum spousal resource standard” means the maximum amount of the couple’s combined countable resources established for a community spouse to maintain himself in the community calculated in accordance with §1924(f)(2)(A)(ii)(II) of the Social Security Act. This amount increases annually by the same percentage as the percentage increase in the Consumer Price Index for all urban consumers between September 1988 and the September before the calendar year involved as required in §1924(g) of the Social Security Act.

~~“Maintenance needs standard” means an income standard to which a community spouse's or other family member's income is compared in order to determine the community spouse's and other family members' maintenance allowance.~~

“Maximum monthly maintenance needs standard” is the upper limit, i.e. cap, established under §1924(d)(3)(C) of the Social Security Act.

“Medical institution” or “nursing facility” means hospitals and nursing facilities (including ICF/MR), consistent with the definitions of such institutions found in the Code of Federal Regulations at 42 CFR 435.1009, 440.40 and 440.150 and which are authorized under Virginia law to provide medical care.

“Minimum monthly maintenance needs allowance” means the monthly maintenance needs standard, plus an excess shelter allowance, if applicable, not to exceed the maximum monthly maintenance needs standard. The

minimum monthly maintenance needs allowance is the amount to which a community spouse's income is compared in order to determine the community spouse's monthly income allowance.

"Minor " means a child under age 21, of either spouse, who lives with the community spouse.

"Monthly maintenance needs standard" means an amount no less than 150% of 1/12 of the Federal Poverty Level for a family of two in effect on July 1 of each year.

"Other family member's" means dependent children ~~who are minors or dependent~~ , and dependent parents and siblings of either member of a couple who reside with the community spouse.

~~"Other family member's maintenance needs allowance" means an amount for each family member, equal to 1/3 of the applicable percentage of 1/12 of the FPL for a family of two in effect on July 1 of each year, reduced by the amount of the monthly income of that family member.~~

"Otherwise available income or resources" means income and resources which are legally available to the community spouse and to which the community spouse has access and control.

"Promptly assess resources" means within 45 days of the request for resource assessment unless the delay is due to nonreceipt of documentation or verification, if required, from the applicant or from a third party.

“Protected period” means a period of time, not to exceed 90 days after an initial determination of medical assistance eligibility. During the protected period, the amount of the community spouse resource allowance will be excluded from the institutionalized spouse’s countable resources if the institutionalized spouse expressly indicates his intention to transfer resources to the community spouse.

"Resource assessment" means ~~an appraisal completed by request~~ a computation, completed by request or upon medical assistance application, of a couple's combined countable resources at the beginning of the first continuous period of institutionalization of the institutionalized spouse beginning on or after September 30, 1989.

“Resources” means real and personal property owned by a medical assistance applicant or his spouse.

Resources do not include resources excluded under subsection (a) or (d) of section 1613 of the Social Security Act and resources that would be excluded under section 1613(a)(2)(A) but for the limitation on total value described in such section.

“Significant financial duress” means, but is not limited to, threatened loss of basic shelter, food or medically necessary health care or the financial burden of caring for a disabled child, sibling or other immediate relative.

“Spousal protected resource amount” means (at the time of medical assistance application as an institutionalized spouse,) the greater of: (i) the spousal resource standard in effect at the time of application; (ii) the spousal share, not to exceed the maximum spousal resource standard in effect at the time of application; (iii) the amount

actually transferred to the community spouse by the institutionalized spouse pursuant to a court spousal support order; or the (iv) amount of resources designated by a Department hearing officer.

"Spousal resource standard" means the minimum amount of a couple's combined countable resources . (~~\$12,000 in 1989 and as increased each year beginning in 1990 by the same percentage increase as in the Consumer Price Index~~), calculated in accordance with §1924(f)(2)(A)(i) of the Social Security Act necessary for the community spouse to maintain himself in the community. The amount increases each calendar year after 1989 by the same percentage increase as in the Consumer Price Index as required by §1924(g) of the Social Security Act.

"Spousal share" means ½ of the couple's total countable resources at the beginning of the first continuous period of institutionalization ~~, or at the beginning of the first continuous period of receipt of waiver services,~~ as determined by a resource assessment.

"Spouse" means a person who is legally married to another person under Virginia law.

"State Plan" means the State Plan for Medical Assistance.

"Undue hardship" means denial of ~~Medicaid~~ medical assistance eligibility due to excess resources would result in the institutionalized spouse being removed from the institution and unable to purchase life sustaining medical care when the applicant has exhausted all legal avenues to access the resources.

"Waiver services" means ~~Medicaid~~ medical assistance reimbursed home or community-based services covered under a §1915(c) waiver approved by the Secretary of the United States Department of Health and Human Services.

## Subpart II

### Resource Assessments and Eligibility

#### Article 1

#### General

12VAC30-110-730. Applicability.

~~Resource assessment and resource eligibility rules contained in this subpart shall apply to:~~

~~1. Persons whose first continuous period of institutionalization began on or after September 30, 1989; and~~

~~2. Institutionalized persons who leave the institution, or cease receiving waiver services, for at least 30 consecutive days and who are readmitted to the institution for a continuous period, or begin receiving waiver services for a continuous period, on or after September 30, 1989.~~

A. These income and resource regulations shall apply to a married institutionalized individual who:

1. Was admitted to a medical institution, medical assistance community-based waiver service or hospice service on or after September 30, 1989, and has been continuously institutionalized since admission, and

2. Has a community spouse.

B. In determining the income and resources of an institutionalized spouse (as defined in 12 VAC30-110-720) the provisions of 12VAC30-110-720 through 12 VAC30-110-1010 supercede any other provision of medical assistance regulations which is inconsistent with them.

C. Except as this section specifically provides, this section does not apply to:

1. The determination of what constitutes income or resources, or

2. The methodology and standards for determining and evaluating income and resources.

D. These rules shall cease to apply to determinations of medical assistance eligibility or to post-eligibility determinations of patient pay in the first calendar month following changes in circumstances resulting in an institutionalized spouse no longer being institutionalized or no longer having a community spouse.

Article 2

Assessments of Couple's Resources

12VAC30-110-740. Repealed ~~Resource assessment initiated.~~

~~A resource assessment shall be initiated:~~

~~1. Upon payment of a fee, if any, the amount of which is determined by the Department of Social Services, by either member of a couple, or a representative acting on behalf of either spouse, if the institutionalized spouse has not applied for Medical assistance; or~~

~~2. Upon application for Medical assistance by an institutionalized spouse who has a community spouse.~~

12VAC30-110-741. Resource assessment required.

A resource assessment shall be completed by the entity determining medical assistance eligibility on all medical assistance applications for married institutionalized individuals who have a community spouse. If an applicant alleges his marital status is unknown, it shall be his responsibility to establish his marital status. It shall be the applicant's responsibility to locate his community spouse. If attempts to locate the separated spouse are unsuccessful or the community spouse does not provide the required information necessary to complete the

resource assessment, the medical assistance eligibility application will be denied due to inability to complete the required resource assessment.

12VAC30-110-744. Resource assessment initiated.

A resource assessment shall be initiated by an entity determining medical assistance eligibility:

A. Upon request by either spouse of a couple, or a representative acting on behalf of either spouse, at the beginning of the first continuous period of institutionalization when:

1. All relevant documentation of resources has been received, and

2. Upon payment of a fee, if any, the amount of which is determined by the entity determining medical assistance eligibility, if the institutionalized spouse has not applied for medical assistance; or

B. Upon application for medical assistance by or on behalf of a married institutionalized individual who has a community spouse.

12 VAC30-110-747. Total resources.

There shall be computed as of the beginning of the first continuous period of institutionalization of the institutional spouse, the total value of the couple's resources to the extent either the institutionalized spouse or the community spouse has an ownership interest.

12 VAC30-110-750. Notification of documentation required.

When a resource assessment is initiated, the Department of Social services shall notify the applicant of all relevant documentation required to be submitted for the assessment.

12VAC30-110-751. Spousal share.

The total value of the couple's combined resources shall be divided by two to determine the spousal share.

12VAC30-110-760. Failure to provide documentation.

If an applicant fails to provide requested documentation necessary to complete the required resource assessment within 45 days of receipt of notification sent pursuant to 12VAC30-110-750, the department shall notify him that the assessment cannot be completed and Medical assistance eligibility shall be denied.

12VAC30-110-770. Notification of assessment and appeal rights.

The department shall provide each member of a couple with copies of the completed resource assessment and the documentation used to produce it. The department shall notify the couple of the procedure by which to appeal the resource assessment.

12VAC30-110-780. Appeal of resource assessment.

A. Not accompanied by a ~~Medicaid~~ medical assistance application. If the resource assessment was conducted without a concurrent ~~Medicaid~~ medical assistance application, ~~it an ineligible spouse~~ may not be appealed appeal the assessment pursuant to the existing Client Appeals regulations (Part I (12VAC30-110-10 et seq.) of this chapter) ~~by an ineligible spouse ; but; however, an~~ ineligible spouses spouse will have an opportunity to appeal assessment findings if and when ~~their his~~ institutionalized spouses spouse apply applies for ~~Medicaid~~ medical assistance .

B. ~~Medicaid~~ Medical assistance application. A resource assessment which was conducted pursuant to a ~~Medicaid~~ medical assistance application submitted by the institutionalized spouse may be appealed by either spouse pursuant to existing Client Appeals regulations (Part I (12VAC30-110-10 et seq.) of this chapter).

ARTICLE 3.

RESOURCE ELIGIBILITY DETERMINATIONS FOR INSTITUTIONALIZED SPOUSES.

12VAC30-110-790. Applicability.

This article shall be used to determine ~~an~~ a married institutionalized ~~spouse's individual's~~ individual's initial and continuing medical assistance eligibility for his current continuous period of institutionalization.

12VAC30-110-800. Initial eligibility determinations.

~~Except as provided in 12VAC30-110-820 and 12VAC30-110-830, a~~ An institutionalized spouse ~~is resource eligible for~~ meets the Medicaid medical assistance resource eligibility requirements if the difference between the couple's ~~combined total~~ total countable resources at the time of application and the ~~community spouse resource allowance,~~ spousal protected resource amount as defined in 12VAC30-110-720, is equal to or less than the appropriate ~~Medicaid~~ medical assistance resource limit for one person.

12VAC30-110-810. Initial determinations of ineligibility.

~~A. If the difference between a couple's current combined total countable resources and the community spouse resource allowance is greater than the appropriate Medicaid resource limit for one person, the institutionalized~~

~~spouse shall be ineligible for Medicaid until the couple's combined countable resources are reduced to the greatest of: 1. The state's spousal resource standard (\$12,000 or higher amount determined in accordance with subsection B of this section) plus the appropriate Medicaid resource limit for one person;~~

~~2. The spousal share (not to exceed \$60,000 or higher amount determined in accordance with subsection B of this section) plus the appropriate Medicaid resource limit for one person;~~

~~3. The amount transferred by an institutionalized spouse to the community spouse under a court order for spousal support plus the appropriate Medicaid resource limit for one person; or~~

~~4. A spousal allowance determined necessary by a department hearing officer plus the appropriate Medicaid resource limit for one person.~~

~~B. For services furnished during a calendar year after 1989, the dollar amounts specified in this section shall be increased by the same percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved.~~

When the institutionalized spouse has countable resources in excess of the medical assistance resource limit for one person, the application for medical assistance shall be denied.

12VAC30-110-813. Attribution of resources at the time of initial eligibility determination.

In determining the countable resources of an institutionalized spouse at the time of application, regardless of any state laws relating to community property or division of marital property, all resources held by either the institutionalized spouse, community spouse, or both, shall be considered available to the institutionalized spouse but only to the extent that the amount of such resources exceeds the spousal protected resource amount calculated in accordance with §1924(f)(2)(A) of the Act.

12 VAC30-110-815. Spousal protected resource amounts.

In the initial determination of eligibility, there shall be deducted from the couple's total combined countable resources in the application month a spousal protected resource amount.

12VAC30-110-820. ~~Revisions to the community spouse resource allowance.~~ Repealed

~~For the purposes of this article, a community spouse resource allowance may be revised if:~~

~~1. A department hearing officer determines on appeal that the income generated from the community spouse resource allowance as originally calculated as described in 12VAC30-110-810 of this article is inadequate to~~

~~raise the community spouse's income to the minimum amount to be deducted as a maintenance allowance in the post-eligibility determination made pursuant to Subpart III (12VAC30-110-920 et seq.);~~

~~2. A department hearing officer determines on appeal that the original calculation was incorrect;~~

~~3. The department determines that the original information with which the spousal share was calculated was incorrect; or~~

~~4. An institutionalized spouse transfers resources to a community spouse pursuant to a court order for spousal support.~~

12VAC30-110-830. Additional resource exclusions.

If an institutionalized spouse has resources exceeding the appropriate ~~Medicaid~~ medical assistance resource limit for one person, the following are deducted from his resources for the purpose of establishing eligibility, as appropriate:

1. The amount of resources which the institutionalized spouse has transferred to the community spouse or to other dependents pursuant to a court support order;

~~2. Any support rights the institutionalized spouse has assigned to the Commonwealth;~~

~~3. Any support rights which cannot be assigned due to the institutionalized spouse's legal incompetency and upon which the Commonwealth would have a legal right to recover against the community spouse;~~

~~4. 2.~~ An amount necessary to make the individual eligible if the department determines that the denial of ~~Medicaid~~ medical assistance would create undue hardship as defined in 12VAC30-110-720.

12VAC30-110-840. ~~Redetermination of eligibility of institutionalized spouses.~~ Separate treatment of resources after eligibility for benefits established.

Beginning with the first calendar month following the date of the initial determination of eligibility, unless 12VAC30-110-900 ~~or 12VAC30-110-910~~ applies, the institutional spouse's continuing eligibility shall be determined based solely on resources held in his name. The ~~community spouse's resources~~ resources owned by the community spouse shall not be deemed available to the institutional spouse in the month following the initial month of ongoing eligibility.

12VAC30-110-850. Post-eligibility resource transfers.

After an initial determination of eligibility and during the protected period specified in 12VAC30-110-860, an institutionalized spouse may transfer to his community spouse resources equal to any of the community spouse resource allowance which ~~is~~ are not already titled to the community spouse. Any resource owned by the institutionalized spouse amount of the community spouse resource allowance which is not transferred pursuant to this section and which ~~is~~ the institutionalized spouse does not actually make available to meet the community spouse's needs, shall be deemed available to the institutional spouse for the purpose of determining continuing eligibility.

12VAC30-110-853. Community spouse resource allowance.

The community spouse resource allowance shall be calculated by determining the amount by which the greatest of:

1. The spousal resource standard;
2. The spousal share not to exceed the maximum spousal resource standard;
3. An amount established by a Department hearing officer; or
4. An amount actually transferred from the institutionalized spouse to the community spouse under a court spousal support order

exceeds the amount of resources otherwise available to the community spouse (determined without regard to such an allowance). If the community spouse has title to resources equal to or exceeding his spousal protected resource amount, he shall not be entitled to a community spouse resource allowance.

12VAC30-110-856. Revisions to the community spouse resource allowance.

For the purposes of this article, a community spouse resource allowance may be revised if:

- A. A department hearing officer determines on appeal that the income generated from the community spouse resource allowance as originally calculated pursuant to 12VAC30-110-853 of this article is inadequate to raise the community spouse's income to the minimum amount to be deducted as a maintenance allowance in the post-eligibility determination made pursuant to Subpart III (12VAC30-110-920 et seq.);
  
- B. A Department hearing officer determines on appeal that the original calculation was incorrect;
  
- C. The Department determines that the original information with which the spousal share was calculated was incorrect; or
  
- D. An institutionalized spouse transfers resources to a community spouse pursuant to a court order for spousal support.

12VAC30-110-860. Protected periods of eligibility.

Subject to 12VAC30-110-870, for 90 days after an initial determination of eligibility, resources in the institutionalized spouse's name necessary to meet the community spouse resource allowance shall be disregarded in determining continued eligibility of the institutionalized spouse. ~~an~~ An institutionalized spouse's eligibility shall be protected ~~(i.e., the resources in the community spouse resource allowance shall not be attributed to the institutionalized spouse)~~ to allow him time to legally transfer resources pursuant to 12VAC30-110-850 if the institutionalized spouse expressly indicates in writing his intention to effect such a transfer. Absent such an expression of intent, the protected period will not extend beyond the end of the month in which eligibility is being determined. ~~The department may extend the protected period if it finds an extension is necessary.~~ The 90 day protected period shall begin with the date the agency takes action to approve the institutionalized spouse's initial eligibility for medical assistance for institutional, waiver, or hospice services. No extension of the protected period shall be permitted.

12VAC30-110-870. Exception to protected period of eligibility.

If, at the time of an initial determination of eligibility, a community spouse has title to resources equal to or exceeding his ~~community spouse resource allowance~~ spousal protected resource amount, no protected period of eligibility shall exist. ~~In this circumstance, an institutionalized spouse may transfer resources in any amount~~

~~to the community spouse, pursuant to §1917 of the Social Security Act, but there shall be no protected period of eligibility for doing so.~~

12VAC30-110-880. Additional resources acquired during protected period of eligibility.

If ~~a couple~~ an institutionalized spouse obtains additional resources during a protected period of eligibility, the additional resources shall be exempt during the protected period if:

~~1.A~~ The new resources combined with other resources that the institutionalized spouse intends to retain do not exceed the appropriate ~~Medicaid~~ medical assistance resource limit for one person, or

~~2.B~~ The institutionalized spouse intends to transfer the new resources to the community spouse during the protected period of eligibility ~~to the community spouse,~~ and the ~~community spouse's resources are less than total resources to be transferred do not exceed~~ the community spouse resource allowance.

12VAC30-110-890. ~~Resources transferred pursuant to §1917 of the Act. Repealed.~~

~~Provided transfers are made within one month of the initial determination of eligibility or within the protected period specified in 12VAC30-110-860, resources held by an institutionalized spouse shall not be counted in determining continuing eligibility when §1917 transfers are made to parties~~

~~for which there is no penalty for failure to receive equitable value, or transfer for which equitable value is received.~~

12VAC30-110-900. Resource eligibility determinations in retroactive ~~periods~~ months .

A. First application for ~~Medicaid~~ medical assistance . In each of the three months preceding an institutionalized spouse's first application for ~~Medicaid~~ medical assistance in the current continuous period of institutionalization for which resource eligibility is to be determined, the community spouse protected resource allowance amount shall be deducted from the couple's combined countable resources held on the first moment of the first day of each retroactive month.

B. Later applications for ~~Medicaid~~ medical assistance when Medicaid medical assistance eligibility was established previously. ~~In later applications for the same period of institutionalization, including retroactive months, the community spouse resource allowance shall not be deducted from the couple's combined countable resources except in the first month in the retroactive period for which eligibility is being determined.~~ If an individual established medical assistance eligibility as an institutionalized spouse during a period of institutionalization that began on or after September 30, 1989, regardless of whether the period of institutionalization is the same continuous period covered by the previous application, resources owned by the community spouse are not considered in determining the institutionalized spouse's medical assistance eligibility.

C. Later applications for medical assistance when Virginia medical assistance eligibility was not previously established. Regardless of whether previous medical assistance applications have been submitted, if an individual has never established medical assistance eligibility as an institutionalized spouse, the application shall be treated in the same manner as the first application.

12VAC30-110-910. Eligibility for community spouses and other family members.

~~Resources are considered under the eligibility rules which would apply to the community spouse and other family members, regardless of the rules governing the institutionalized spouse. If a community spouse or other family member applies for medical assistance eligibility on his own behalf, these eligibility regulations will not be used to determine his eligibility for medical assistance.~~  
If a community spouse or other family member applies for medical assistance eligibility on his own behalf, these eligibility regulations will not be used to determine his eligibility for medical assistance.

Article 3.

Income.

12VAC30-110-920. Applicability.

~~The post-eligibility process contained in this subpart shall apply to persons living in a nursing facility and to persons receiving services under home and community based waivers. This process determines how much such persons contribute to the cost of their institutional care or waiver services. The rules in this article shall apply only the institutional spouse's eligibility for medical assistance.~~  
The rules in this article shall apply only the institutional spouse's eligibility for medical assistance.

~~Article 2~~

**Income**

12VAC30-110-921. Rules for treatment of income.

During any month in which an institutionalized spouse is an inpatient in a medical institution, is receiving medical assistance community-based waiver services or has elected hospice services, no income of the community spouse shall be deemed available to the institutionalized spouse except as provided in 12 VAC 30-110-930.

~~Subpart III~~

~~Post-Eligibility Process~~

~~Article 1~~

**General**

12VAC30-110-930. Determining income.

A couple's income shall be determined as follows, without regard to state laws governing community property or division of marital property:

1. Income from nontrust property. Unless a department hearing officer determines that the institutionalized spouse has proven to the contrary by a preponderance of the evidence:

a. Income paid to one spouse belongs to that spouse;

b. Each spouse owns one-half of all income paid to both spouses jointly;

c. Each spouse owns one-half of any income which has no instrument establishing ownership;

d. Income paid in the name of either spouse, or both spouses and at least one other party, shall be considered available to each spouse in a proportionate share. When income is paid to both spouses and each spouse's individual interest is not specified, ~~consider~~ one-half of their joint interest in the income shall be considered as available to each spouse.

2. Income from trust property. Ownership of trust property shall be determined pursuant to the State Plan, except as follows:

- a. Each member of a couple owns the income from trust property in accordance with the trust's specific terms.
  
- b. If a trust instrument is not specific as to the ownership interest in income, ownership shall be determined as follows:
  - (1) Income paid to one spouse belongs to that spouse;
  
  - (2) One-half income paid to both spouses shall be considered available to each spouse;
  
  - (3) Income from a trust paid in the name of either spouse, or both spouses and at least one other party, shall be considered available to each spouse in a proportionate share. When income from a trust is paid to both spouses and each spouse's individual interest is not specified, consider one-half of their joint interest in the income as available to each spouse.

Subpart III.

Post-Eligibility Process.

~~Article 3~~

12VAC30-110-940. Applicability.

After an institutionalized spouse is determined or redetermined to be eligible for medical assistance, and after all appropriate deductions pursuant to 12VAC30-110-950 through 12VAC30-110-970 have been made from an institutionalized spouse's gross monthly income pursuant to this article, the balance shall constitute the maximum amount the institutionalized spouse shall pay for medical assistance-covered institutional or waiver services.

12VAC30-110-950. Mandatory deductions from institutionalized spouse's income.

The following amounts shall be deducted from the institutionalized spouse's gross monthly income:

1. A personal needs allowance of \$30;
2. The community spouse ~~maintenance~~ monthly income allowance as calculated pursuant to 12VAC30-110-960;
3. The family maintenance allowance, if any, as calculated pursuant to 12VAC30-110-970; and
4. Incurred medical and remedial care expenses recognized under state law, not covered under the State Plan and not subject to third party payment.

12VAC30-110-960. Community spouse ~~maintenance~~ income allowance.

A. Unless the exceptions in B and C of this section apply, a community spouse monthly income allowance shall be deducted from the monthly income of the institutionalized spouse. The community spouse ~~maintenance~~ monthly income allowance shall be the amount by which the ~~greatest~~ greater of ~~the following~~ amounts—:

1. The ~~total of the~~ community spouse monthly maintenance needs standard ~~and plus~~ the excess shelter allowance, if any;

~~2. An amount set in a court order for spousal support court order;—or~~

~~3-2~~ . An amount determined necessary by a department hearing officer because of exceptional circumstances resulting in extreme financial duress;

exceeds the amount of monthly income otherwise available to the community spouse (determined without regard to such an allowance).

B. ~~Deductions are not made~~ A community spouse monthly income allowance shall not be deducted from the income of the institutionalized spouse ~~income—when the~~ institutionalized spouse does not actually make an income allowances allowance ~~are not actually made—~~ available to the community spouse.

C. If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered.

12VAC30-110-970. Family members maintenance needs allowance.

A. There shall be deducted from the institutionalized spouse's income an allowance for each dependent family member.

B. The amount deducted shall be an ~~An~~ amount equal to 1/3 of the ~~minimum~~ community spouse monthly maintenance needs standard ~~for the community spouse, without regard to excess shelter allowances, minus each family member's income, shall be deducted for the maintenance of each family member.~~

~~B.~~ C. This allowance is to be deducted regardless of whether the institutionalized spouse actually makes the allowance available to the family member.

SUBPART IV.

ARTICLE 1.

APPEALS.

General.

12VAC30-110-980. Applicability.

The appeals process contained in this subpart shall apply to appeals of resource assessments, initial determinations and redeterminations of resources    and income amounts and allowances made in connection with applications for ~~Medicaid~~ medical assistance benefits by spouses institutionalized for a continuous period on or after September 30, 1989, or receiving ~~waived~~ waiver or hospice services for a continuous period on or after September 30, 1989, pursuant to existing Client Appeals regulations (Part I (12VAC30-110-10 et seq.) of this chapter).

ARTICLE 2.

NOTIFICATION.

12VAC30-110-990. Notices.

Written notices are to be provided to the institutionalized spouse and the community spouse advising them of:

1. Resource assessments ;

~~4. 2.~~ The amounts deducted for spousal and family allowances used in the post-eligibility calculation; and

~~2. 3.~~ Their rights to appeal the amounts deducted in the calculations for determining the spousal and family allowances used in the post-eligibility calculation.

12VAC30-110-1000. Regulatory authority.

Hearings and appeals held for the purpose of 12VAC30-110-980 are consistent with regulations at 42 CFR Part 431, Subpart E.

12VAC30-110-1010. Hearing officer authority.

Through the appeals process applicable as described in 12VAC30-110-980, hearing officers shall prescribe appropriate increases in ~~spousal maintenance~~ income or resource allowances in the event they determine that exceptional circumstances exist which cause significant financial duress to the community spouse.

12VAC30-110-1011. Appealable issues.

Only the following issues shall be appealable under this section:

- A. Spousal share determinations;
- B. Initial resource eligibility determinations and redeterminations;
- C. Spousal protected resource amounts;
- D. Community spouse resource allowance;
- E. Income eligibility determinations and redeterminations; and
- F. Patient pay and income allowance calculations.

CERTIFIED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
C. Mack Brankley, Acting Director  
Dept. of Medical Assistance Services